

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ORDER
04-CR-189A

RICHARD MULLEN,
JOSEPH HARGRAVE,
ROBERT ADAMS,

Defendants.

This case was referred to Magistrate Judge Leslie G. Foschio, pursuant to 28 U.S.C. § 636(b)(1)(A), on October 19, 2005. Defendants filed omnibus motions seeking inter alia suppression of evidence, dismissal the Second Superseding Indictment, a bill of particulars and other discovery.

On February 24, 2006, Magistrate Judge Foschio filed a Report and Recommendation, recommending that defendants' motions for dismissal of the indictment and for suppression of evidence should be denied. On that same date, Magistrate Judge Foschio filed a Decision and Order denying in part and granting in part the defendants' motions for a bill of particulars and other discovery.

Defendants Adams and Hargrave filed objections to Magistrate Judge Foschio's Report and Recommendation. Defendant Adams also filed an

appeal of Magistrate Judge Foschio's Decision and Order. The Court heard argument on the objections on August 15, 2003.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing oral argument, the Court adopts the proposed findings of the Report and Recommendation.¹ Accordingly, for the reasons set forth in Magistrate Judge Foschio's Report and Recommendation, defendants' motions to dismiss and to suppress evidence are denied.

Pursuant to 28 U.S.C. § 636(b)(1)(A), the district court "may reconsider any pretrial matter under this [section] where it has been shown that the magistrate's order is clearly erroneous or contrary to law." The Court has reviewed defendant Adams' objections and Magistrate Judge Foschio's Decision and Order. Upon such review and after hearing argument from counsel, the Court finds that Magistrate Judge Foschio's Decision and Order is neither clearly erroneous nor contrary to law. Accordingly, the Court affirms Magistrate Judge Foschio's Decision and Order.

¹ Contrary to Magistrate Judge Foschio's determination on page 19 of the Report and Recommendation, defendant Adams does have standing to challenge the Richardson Order as he was a party to conversations intercepted under that order. Nevertheless, the Court finds that Adams' motion to suppress electronic surveillance evidence should be denied for the reasons stated in Magistrate Judge Foschio's Report and Recommendation.

The case is referred back to Magistrate Judge Foschio for further proceedings.

IT IS SO ORDERED.

/s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: September 15 , 2006